

REMARKS/ARGUMENTS

Claims 1-39 stand rejected in the outstanding Official Action. Claims 1, 14 and 27 have been amended and therefore claims 1-39 remain in this application.

The Examiner's acknowledgment of PTO acceptance of the previously filed formal drawings is very much appreciated. Additionally, the Examiner's consideration of Applicants' previously submitted Information Disclosure Statements is appreciated. Finally, the Examiner's acknowledgment of Applicants' foreign priority claim is appreciated and Applicants will submit certified copies of the three priority documents in due course.

Claims 1-39 stand rejected under 35 USC §101 as allegedly being non-statutory. While Applicants respectfully traverse the Patent Office contention that the failure to produce a physical tangible result renders computer implemented inventions non-statutory, the presently pending claims have been amended to clearly recite at least what the Patent Office now considers to be statutory subject matter.

The allegation that claims 1-13 do not positively recite a tangible result is clearly not supported in view of the above amendments to independent claim 1 (from which claims 2-13 depend). Claim 1 has been amended to recite the further step of "controlling a performance level of said processor in dependence upon said calculated target processor performance level." Thus, there is a tangible result, i.e., "controlling performance level of the processor," based upon the previously recited calculations in the method.

Applicants note that the above amendment is supported in Applicants' specification on page 9, lines 28-31, in that the "intelligent energy manager 120 is implemented as a set of kernel modules and patches that hook into the standard kernel functional modules and serve to control

the speed and voltage levels of the processor." Thus, this controlling of the processor is a clear tangible result and its recitation in independent claims 1, 14 and 27 clearly avoids any further allegation of non-statutory subject matter.

Claims 14-26 are directed to a computer program product and the preamble of this claim has been amended to include language which numerous PTO examiners and quality assurance personnel have indicated meets the statutory requirement, i.e., "a computer program product comprising a computer-readable storage medium comprising computer readable instructions" Thus, claim 14 and claims 15-26 dependent thereon now clearly meet Patent Office requirements regarding the claiming of computer program products.

Independent claim 27 and claims 28-39 dependent thereon also recite the existence of the "controller" apparatus which is the intelligent energy manager 120 recited on page 9 of the specification as noted above. Thus, claim 27 and claims 28-39 dependent thereon clearly meet the requirements of 35 USC §101 and any further rejection thereunder is respectfully traversed.

In view of the above amendments, claims 1-39 are believed to clearly meet the Patent Office's as yet unsupported requirement that some tangible result be specified in the claims and any further rejection thereunder is respectfully traversed.

Claims 1-39 stand rejected under 35 USC §102(b) as being anticipated by Flautner and Mudge ("Vertigo: Automatic Performance-Setting for Linux"). As set out in the outstanding Official Action at the top of page 3, in order to support a rejection under §102(b), the Examiner must establish that "the invention was patented or described in a printed publication . . . **more than one year prior** to the date of application for patent in the United States" (emphasis added). The present application was filed on October 20, 2003.

It would appear that the Examiner believes that May 17, 2002 is a publication date for the Flautner and Mudge reference. However, the document provides no indication that this date is a publication date and, in fact, this is the date the inventors actually wrote the article. Any support the Examiner may have for believing May 17, 2002 to be a publication date is not set out in the outstanding Official Action and clarification is requested.

In fact, Applicants attach a photocopy of an internet page indicating that the Flautner and Mudge paper was publicly presented in a seminar given at Cornell University on October 25, 2002, i.e., less than 12 months before the U.S. filing date of October 20, 2003. Because the Examiner has presented no evidence suggesting a publication on May 17, 2002, because, indeed, this date is the date the inventors wrote the Flautner and Mudge document and, in view of the submitted evidence that the document was not published until October 25, 2002 (less than a year prior to the filing of the present application), Flautner and Mudge is not prior art and does not provide any basis for rejection under 35 USC §102(b).

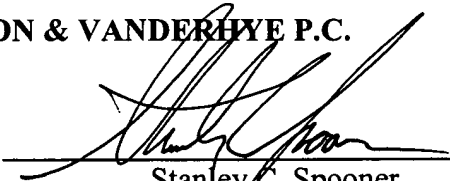
As a result, there is no basis for rejection of claims 1-39 under 35 USC §102 and any further rejection thereunder is respectfully traversed. Should the Examiner believe that some other rejection under §102 or §103 would be appropriate, he is respectfully requested to note that the co-authors of the Flautner and Mudge reference comprise the co-inventors of the present application and the two co-authors are employed by the two assignees of the present invention. As a result, there is simply no statutory basis under §102 or §103 for rejecting any claims in the present application over the Flautner and Mudge reference and any further rejection thereunder is respectfully traversed.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1-39 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

Respectfully submitted,

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Cornell Systems Lunch

Fall 2002

Emin Gun Sirer and Andrew Myers



Sponsored by the Information Assurance Institute (IAI),

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This fall, we focus on relevant papers from the upcoming OSDI and ASPLOS conferences.

We will meet once a week on fridays at noon in the systems lab (Upson 331). There will be free lunch for the participants, contingent upon their participation in the paper discussion (i.e. there is no such thing as a free lunch).

The systems lunch is open to all Cornell students interested in systems. First-year graduate students are especially welcome.

You are encouraged to sign up for CS 754, Systems Research Seminar, for one credit.

Past systems seminars: Spring 02 Fall 01

Schedule

Date	Paper	Presenter
August 30	<u>Macroscopic Behavior of the TCP Congestion Avoidance Algorithm</u> Mathis, Semke, Mahdawi and Ott CCR 27(3), 1997.	Ken Hopkinson
September 6	<u>Replication Strategies in Unstructured Peer-to-Peer Networks</u> Edith Cohen and Scott Shenker SIGCOMM 2002.	Indranil Gupta
September 13	<u>Mate: A Tiny Virtual Machine for Sensor Networks</u> Philip Levis, David Culler ASPLOS 2002.	Rimon Barr
September 20	<u>Joint Local and Global Hardware Adaptations for Energy</u> Ruchira Sasanka, Christopher J. Hughes, Sarita V. Adve ASPLOS 2002.	Virantha Ekanayake

September 27	<u>An Integrated Experimental Environment for Distributed Systems and Networks</u> White, Lepreau, Stoller, Ricci, Guruprasad, Newbold, Hibler, Barb, Joglekar To appear in OSDI 2002	Clint Kelly
October 4	<u>Defensive Programming: Using an Annotation Toolkit to Build Dos-Resistant Software</u> Xiaohu Qie, Ruoming Pang, Larry Peterson. Tech Report	Michael Clarkson
October 11	<u>BuddyCache: High-Performance Object Storage for Collaborative Strong-Consistency Applications in a WAN</u> Bjornnson and Luiba Shrira To appear in OOPSLA 2002	Nate Nystrom
October 18	<u>TAG: a Tiny Aggregation Service for Ad-Hoc Sensor Networks.</u> Samuel R. Madden, Michael J. Franklin, Joseph M. Hellerstein, and Wei Hong To appear in OSDI 2002	Yong Yao
October 25	<u>Vertigo: Automatic Performance-Setting for Linux.</u> Krisztián Flautner and Trevor Mudge. To appear in OSDI 2002	David Fang
November 1	<u>Fine-Grained Network Time Synchronization Using Reference Broadcasts</u> Jeremy Elson, Lewis Girod and Deborah Estrin To appear in OSDI 2002	Manpreet Singh
November 8	<u>System support for background replication</u> Arun Venkataramani, Ravi Kokku, Mike Dahlin To appear in OSDI 2002	Tom Roeder
November 15	<u>The Effectiveness of Request Redirection on CDN Robustness</u> Limin Wang, Vivek Pai, Larry Peterson To appear in OSDI 2002	Rama

November 22	Systems@Cornell Overview Dean Fuchs visit	Cornell Profs
November 29	No meeting, Happy Thanksgiving.	
December 6	<u>Denali: Lightweight Virtual Machines</u> Gribble et al. To appear in OSDI 2002	Ranveer Chandra

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